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ROAD USE TAX FUND

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I. Introduction

State, county, and municipal governments currently maintain over 114,000 miles of roadway and nearly 25,000 bridges in the state.¹ Roads are classified as primary roads, secondary roads, and municipal streets.² Primary roads, which include the interstate highway system, comprise less than 10 percent of the mileage. Primary roads are under the jurisdiction of the Department of Transportation (DOT). Secondary roads, which include farm-to-market roads, make up nearly 80 percent of the total mileage and are under the jurisdiction of the counties. Municipal roads and streets comprise over 10 percent of the total. Road classification determines funding levels, maintenance standards, and funding priorities. Decisions regarding construction, reconstruction, maintenance, and repair are generally made by the governmental entity having jurisdiction over the road.³

The major state funding source for the construction, maintenance, and supervision of Iowa's highways is the Road Use Tax Fund (RUTF). This Legislative Guide provides an overview of the RUTF and addresses several issues regarding the RUTF, including the unique constitutional status of the RUTF, its sources of funding, distribution of funding, and what constitutes "construction, maintenance, and supervision" for the purpose of expending constitutionally protected moneys in the RUTF. References in this Guide to the Iowa Code are to the 2011 Iowa Code and 2011 Iowa Code Supplement. If a Code provision or Iowa Acts provision was substantively amended by a 2011 enactment, a 2011 Iowa Acts citation is included in the footnote. Cases and opinions referred to are current through August 2011. All fiscal information was provided by the Fiscal Services Division of the Legislative Services Agency.

II. The Road Use Tax Fund

The RUTF was established in 1949.⁴ The RUTF is governed by Article VII, section 8, of the Iowa Constitution and Code chapter 312.

A. Sources of Road Use Tax Fund Moneys

In fiscal year 2009-2010, the RUTF received approximately \$1.19 billion in revenue as follows:

Motor vehicle fuel taxes:	\$432 million
Motor vehicle registration and title fees:	\$442.5 million
Fee for new registration: ⁵	\$241.7 million
Other revenues: ⁶	\$ 70.4 million

1. Motor Vehicle Fuel Taxes

Motor fuel and special fuel taxes are collected before the fuel leaves the terminal for distribution in this state. The supplier, the blender, or the person who causes the fuel to be imported into the state is responsible for payment of the tax. The per gallon

¹ See <http://www.iowadot.gov/about/Roads,Streets,andBridges.html> (last visited November 2011).

² Iowa Code § 306.3.

³ Iowa Code § 306.4.

⁴ 1949 Iowa Acts ch. 122, § 1.

⁵ Beginning July 1, 2008, a one-time initial registration fee known as the "fee for new registration" replaced the vehicle use tax.

⁶ Includes underground storage tank fees, driver's license fees, miscellaneous vehicle-related collections, and interest.



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amount of the tax is then added to the selling price of every gallon of motor fuel or undyed special fuel sold in this state so that the ultimate consumer bears the burden of the tax.⁷

Between July 1, 2002, and July 1, 2012, the tax rates on gasoline and ethanol blended gasoline will vary based on the number of gallons of ethanol blended gasoline distributed statewide in comparison to the total number of gallons of motor fuel distributed.⁸ The tax rate on gasoline will vary from 20 to 21 cents per gallon and the tax rate on ethanol blended gasoline will vary from 19 to 20 cents per gallon.⁹ Diesel fuel and fuel oil are taxed at the rate of 22.5 cents per gallon. A refund or income tax credit is allowed for taxes paid on fuel in certain circumstances, including fuel used by urban and regional transit systems, by commercial fishers, in various types of machinery and equipment used for nonhighway purposes, in the production of denatured alcohol, and in the extraction and processing of natural deposits; undyed special fuel used in watercraft; and racing fuel.¹⁰

Beginning January 1, 2006, an excise tax of 17 cents was imposed on each gallon of E-85 gasoline. The rate of the excise tax on E-85 gasoline is to be determined based on the number of gallons of E-85 gasoline that are distributed in this state during the previous calendar year. The Department of Revenue is to determine the actual tax paid for E-85 gasoline for each calendar year. The amount of the tax paid on E-85 gasoline during the past calendar year is compared to the amount of tax on E-85 gasoline that would have been paid using the tax rate that was otherwise imposed on ethanol blended gasoline and a difference is calculated. If the difference is equal to or greater than \$25,000, the tax rate for E-85 gasoline for the period beginning July 1 following the end of the determination period is the rate imposed on ethanol blended gasoline.¹¹

2. Motor Vehicle Registration and Title Fees

All fees from the titling and annual registration of motor vehicles are credited to the RUTF except certain fees diverted to the Statutory Allocations Fund and certain collection fees retained by the county treasurers.¹² In most instances, the issuance of motor vehicle certificates of title and registration is the duty of the county treasurer. County treasurers may retain 4 percent of the total collected for each vehicle registration and duplicate registration card or license plate issued, \$2.50 from each certificate of title, 40 percent of the fees collected for certified copies of certificates of

⁷ Iowa Code § 452A.3. Iowa Code § 452A.4 requires a person to obtain a license from the Department of Revenue to sell, or otherwise act as a supplier, importer, exporter, dealer, or user of motor fuel or special fuel within the state. Iowa Code §§ 214A.1 and 452A.2 contain the various definitions of fuels subject to taxation. Generally, motor fuel means gasoline and other liquids advertised or commonly used for the purpose of operating internal combustion engines, including but not limited to motor vehicles. See Iowa Code §§ 214A.1(12, 13) and 452A.2(19, 25). "Special fuel" is defined as fuel oils and all combustible gases and liquids suitable for propelling motor vehicles and turbine-powered aircraft, except motor fuel. See Iowa Code § 452A.2(34).

⁸ Iowa Code § 452A.3.

⁹ Iowa Code § 452A.3. According to the Department of Revenue, effective July 1, 2008, the tax rate for ethanol blended gasoline is 19 cents per gallon and the tax rate for regular gasoline is 21 cents per gallon.

¹⁰ Iowa Code § 452A.17(1)(a).

¹¹ Iowa Code § 452A.3(1B, 1C). According to the Department of Revenue, effective July 1, 2007, the tax rate for E-85 gasoline is 19 cents per gallon. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 and 85 percent by volume of ethanol, if the formulation meets certain standards. See Iowa Code § 214A.1(9).

¹² Iowa Code § 321.145. See 2011 Iowa Acts ch. 113, § 47 (SF 531) and 2011 Iowa Acts ch. 114, § 3 (HF 651).



title, 60 percent of fees collected for perfection of security interests, 25 percent of each penalty for improper business-trade truck registration, and \$1.00 from each fee for new registration.¹³ The moneys retained are deposited in the general fund of the county.¹⁴

Moneys collected from the issuance of registration plates are generally credited to the RUTF. However, the special registration fees paid for certain special plates, such as collegiate plates, Iowa heritage plates, and natural resources plates, are deposited in the RUTF and then equivalent amounts from the Statutory Allocations Fund are reallocated to their respective special funds.¹⁵

In addition to the issuance of motor vehicle registrations and certificates of title, counties not served by a permanent DOT facility are also authorized to issue driver's licenses and to retain \$7.00 of each driver's license transaction fee for deposit in the general fund of the county.¹⁶

3. Fee for New Registration

A fee for new registration in the amount of 5 percent of the purchase price or 5 percent of the leased price is imposed on each vehicle subject to registration.¹⁷ The fee is paid by the owner of the vehicle at the time application is made for a new registration and certificate of title. This first-time registration fee was designed to replace the former vehicle use tax when that tax, as it applied to vehicles subject to registration, was repealed in 2008.¹⁸ All revenues derived from the fee for new registration are credited to the RUTF.

4. Other Revenues — Statutory Allocations Fund

The RUTF also receives revenue from other sources, including revenue derived from environmental protection charges on petroleum diminution,¹⁹ earnings on investments or interest earned on time deposits of money in the RUTF and the funds to which moneys from the RUTF are allocated,²⁰ and fines and fees attributable to commercial vehicle violation citations issued by the Motor Vehicle Division of the DOT.²¹

Certain revenues derived from the regulation of motor vehicles but not constitutionally dedicated for highway purposes are credited to the Statutory Allocations Fund.²² These include revenues from trailer registration fees; fees charged for driver's licenses and nonoperator identification cards; vehicle title fees and surcharges; use taxes on vehicles not subject to registration, manufactured housing, and leased vehicles not requiring titling or registration; and the excise tax imposed on

¹³ Iowa Code § 321.152.

¹⁴ Iowa Code §§ 321.24, 321.151, and 321.152.

¹⁵ Iowa Code §§ 321.34 and 321.145. See 2011 Iowa Acts ch. 114, §§ 2, 3 (HF 651) and 2011 Iowa Acts ch. 113, § 47 (SF 531). In addition to the regular motor vehicle registration fee, a special fee of \$25-\$45 is generally assessed. It is this amount which is reallocated to the funds or functions supported by the issuance of the special plate.

¹⁶ Iowa Code §§ 321M.3 and 321M.9.

¹⁷ Iowa Code § 321.105A.

¹⁸ See 2008 Iowa Acts ch. 1113.

¹⁹ Iowa Code §§ 424.3 and 424.7.

²⁰ Iowa Code § 312.1.

²¹ Iowa Code § 602.8108(8).

²² Iowa Code § 321.145. See 2011 Iowa Acts ch. 113, § 47 (SF 531) and 2011 Iowa Acts ch. 114, § 3 (HF 651).



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the rental of automobiles. For fiscal year 2009-2010, receipts amounting to approximately \$50 million were credited to the Statutory Allocations Fund.

Each quarter, \$3.5 million is transferred from the Statutory Allocations Fund to the Iowa Comprehensive Petroleum Underground Storage Tank Fund, and \$750,000 is transferred to the Renewable Fuel Infrastructure Fund. From the remaining moneys in the fund, annual allocations are made to the DOT for purposes of public transit assistance, to the Motorcycle Rider Education Fund, and to various funds specified for purposes of specialty registration plates under Code section 321.34. Any balance remaining is credited to the RUTF in the following fiscal year. In fiscal year 2009-2010, approximately \$28.9 million was credited to the RUTF from the Statutory Allocations Fund.

B. Road Use Tax Fund Expenditures

Following the transfer of \$42.2 million to the Transportation Investment Moves the Economy in the Twenty-first Century (TIME-21) Fund as required by statute,²³ total expenditures from the RUTF for fiscal year 2009-2010 were \$1.163 billion. The Treasurer of State is required to allocate the RUTF moneys by formula to the Primary Road Fund, the Secondary Road Fund, the Farm-to-Market Road Fund, and the Street Construction Fund of the Cities. However, prior to these allocations occurring, several “off-the-top” allocations are required by statute and additional funds are often appropriated by the General Assembly.²⁴

1. Off-the-Top Allocations

Off-the-top allocations amounted to approximately \$155.8 million, or 13.4 percent of the moneys available in the RUTF for fiscal year 2009-2010. Statutory allocations from the RUTF totaled approximately \$104.1 million in fiscal year 2009-2010.²⁵ Allocations required by statute include credits to the Highway Grade Crossing Safety Fund and the Highway Railroad Grade Crossing Surface Repair Fund; to the Primary Road Fund to pay DOT expenses associated with state institutional roads and state park roads; to the DOT for costs of titling and registration materials and supplies including registration plates; to the Living Roadway Trust Fund;²⁶ to the Primary Road Fund and the Farm-to-Market Road Fund to partially compensate for allowing trucks with certain gross weights to operate on roads of this state; to the Revitalize Iowa’s Sound Economy (RISE) Fund;²⁷ to the DOT for county, city, and state traffic safety improvement projects; to the County Bridge Construction Fund and the City Bridge

²³ Iowa Code § 312.2(15-17). The TIME-21 Fund is established in Iowa Code § 312A.2 and is intended to be repealed in 2028. Revenues in the TIME-21 Fund are derived from registration and title fee increases enacted in 2008 and are distributed 60 percent to the Primary Road Fund to be used for designated highway projects that support Iowa commerce and economic development; 20 percent to the Secondary Road Fund to be used for bridges and for highways in the farm-to-market road system; and 20 percent to the Street Construction Fund of the Cities to be used to sustain and improve the municipal street system. See Iowa Code chapter 312A.

²⁴ Iowa Code § 312.2.

²⁵ Iowa Code § 312.2. Some of the off-the-top allocations include appropriations to the Primary Road Fund, Secondary Road Fund, and Farm-to-Market Road Fund. Specifying allocations in this manner circumvents the use of the distribution formula.

²⁶ The Living Roadway Trust Fund is established in Iowa Code § 314.21, to be used for the development and implementation of integrated roadside vegetation plans.

²⁷ The RISE Fund is established in Iowa Code § 315.2. Pursuant to Iowa Code § 315.3, the fund is used for the establishment, construction, improvement, and maintenance of roads and streets which promote economic development. The fund may also be used for reimbursement or payment to cities or counties of all or part of the interest and principal on general obligation bonds issued by cities or counties for financing approved road and street projects.



Construction Fund; to the DOT for automation and telecommunications equipment and support for vehicle registration and titling by county treasurers; and to the Primary Road Fund for purposes of the commercial and industrial highway network.

Off-the-top allocations appropriated by the General Assembly in fiscal year 2009-2010 amounted to approximately \$51.7 million and included a \$43.9 million appropriation for operating expenses of the DOT.²⁸

Moneys remaining in the RUTF after the off-the-top allocations, approximately \$1.007 billion in fiscal year 2009-2010, are allocated by formula among the various road funds. The Primary Road Fund receives 47.5 percent, the Secondary Road Fund receives 24.5 percent, the Farm-to-Market Road Fund receives 8 percent, and the Street Construction Fund of the Cities receives 20 percent.²⁹

2. Primary Road Fund Allocations

Primary roads are those roads and streets both inside and outside the boundaries of municipalities, including the state primary road system.³⁰ Moneys in the Primary Road Fund may be used to construct and maintain the primary road system and for expenses related to the primary road system, including the maintenance of DOT facilities and merit pay increases for DOT employees for which appropriations are not otherwise made.³¹

Beginning July 1, 2003, and ending June 30, 2013, a portion of the moneys in the Primary Road Fund are to be transferred to the Transfer of Jurisdiction Fund and appropriated to (1) counties and cities that have assumed jurisdiction of certain primary roads identified in a transfer of jurisdiction report compiled by the Ad Hoc Road Use Tax Fund Committee, and (2) the Secondary Road Fund and the Street Construction Fund of the Cities.³² After June 30, 2013, the same portion of the moneys is to be transferred only to the Secondary Road Fund and the Street Construction Fund of the Cities.³³

The DOT is required to spend at least \$30 million annually from the Primary Road Fund on the Commercial and Industrial Highway Network.³⁴ Identification of certain primary highways as part of the Commercial and Industrial Highway Network is intended to concentrate resources to improve the flow of commerce; make travel more convenient, safe, and efficient; and better connect Iowa with regional, national, and international markets.³⁵

3. Secondary Road Fund Allocations

Secondary roads are those roads, outside the boundaries of municipalities, under the jurisdiction and control of the county board of supervisors in the county in which that portion of the road is located.³⁶ Prior to fiscal year 2006-2007, 70 percent of the

²⁸ See 2010 Iowa Acts ch. 1186 for examples of appropriations made from the RUTF.

²⁹ Iowa Code § 312.2.

³⁰ Iowa Code § 306.3(6).

³¹ Iowa Code § 313.4(1-3).

³² Iowa Code § 313.4(6).

³³ Iowa Code § 313.4(7).

³⁴ Iowa Code § 313.4(5).

³⁵ Iowa Code § 313.2A.

³⁶ Iowa Code §§ 306.3(9) and 306.4(2).



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moneys allocated to the Secondary Road Fund of the Counties were apportioned among the counties in the ratio that the needs of the secondary roads of each county bear to the total needs of the secondary roads of the state for each fiscal year based upon the total needs of secondary roads of the state as shown in the latest quadrennial need study, with the remaining 30 percent apportioned among the counties in the ratio that the area of each county bears to the total area of the state.

For fiscal year 2006-2007 and subsequent fiscal years, the distributions from the Secondary Road Fund are calculated by using the methodology determined by the Secondary Road Fund Distribution Committee.³⁷ The methodology was phased in over a five-year period beginning July 1, 2006. The methodology used is as follows:

- a. Fiscal year 2006-2007 — 80 percent needs-based methodology and 20 percent formula.
- b. Fiscal year 2007-2008 — 60 percent needs-based methodology and 40 percent formula.
- c. Fiscal year 2008-2009 — 40 percent needs-based methodology and 60 percent formula.
- d. Fiscal year 2009-2010 — 20 percent needs-based methodology and 80 percent formula.
- e. Fiscal year 2010-2011 et seq. — 100 percent formula.³⁸

The needs-based methodology is that used for distribution during fiscal year 2005-2006 and the formula is that recommended by the Secondary Road Fund Distribution Committee, which is based upon the following: area; rural population; daily vehicle miles traveled; earth surfaced, granular surfaced, and paved surfaced road miles; and length of bridges.

4. Farm-to-Market Road Fund Allocations

Farm-to-market roads are classified as secondary roads and are under the control and jurisdiction of the county board of supervisors in the county in which the road is located. Farm-to-market roads serve the principal traffic-generating arteries of the county and connect such areas to other farm-to-market roads and to primary roads.³⁹ Prior to fiscal year 2006-2007, moneys were apportioned to the counties in the same manner as Secondary Road Fund moneys were apportioned: 70 percent according to need and 30 percent according to area. For fiscal year 2006-2007 and subsequent fiscal years, the distributions from the Farm-to-Market Road Fund are calculated by using the methodology determined by the Secondary Road Fund Distribution Committee. The methodology was phased in over a five-year period beginning July 1, 2006. The methodology used is as follows:

³⁷ Formerly the Secondary Road Fund Distribution Advisory Committee. See 2005 Iowa Acts ch. 142, § 4.

³⁸ Iowa Code §§ 312.3(1) and 312.3C. Iowa Admin. Code 761-102.2(2). For the final report of the committee, see <http://publications.iowa.gov/6556> (last visited November 2011). For distributions prior to fiscal year 2006-2007, see 2005 Iowa Code §§ 307.22(6, 7) and 312.3. The Secondary Road Fund Distribution Committee consists of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa County Supervisors Association, and the Department of Transportation.

³⁹ Iowa Code § 306.3(3).



- a. Fiscal year 2006-2007 — 80 percent needs-based methodology and 20 percent formula.
- b. Fiscal year 2007-2008 — 60 percent needs-based methodology and 40 percent formula.
- c. Fiscal year 2008-2009 — 40 percent needs-based methodology and 60 percent formula.
- d. Fiscal year 2009-2010 — 20 percent needs-based methodology and 80 percent formula.
- e. Fiscal year 2010-2011 et seq. — 100 percent formula.⁴⁰

The needs-based methodology is that used for distribution during fiscal year 2005-2006 and the formula is that recommended by the Secondary Road Fund Distribution Committee which is based upon area; rural population; daily vehicle miles traveled; earth surfaced, granular surfaced, and paved surfaced road miles; and length of bridges.

A county has only three years to expend its allotment for farm-to-market roads. Any amount remaining at the end of this period is reapportioned among all counties.⁴¹

5. Street Construction Fund of the Cities Allocations

Used for the municipal street system, moneys in the Street Construction Fund of the Cities are apportioned among the cities in the ratio which the population of each city, in the most recent federal census, bears to the total population of all cities in the state.⁴² An apportionment to a small city with a farm-to-market extension under county jurisdiction is reduced proportionately based on the mileage of the extension and the balance is transferred to the appropriate county.⁴³ Jurisdiction and control over the municipal street system is vested in the governing body of each municipality, except that the DOT and the municipality exercise concurrent jurisdiction over extensions of primary roads which run through the municipality.⁴⁴ Funds received by a municipality are limited in use to construction, maintenance, and supervision of the public streets.⁴⁵

III. Constitutional Restrictions on Use of Certain RUTF Revenues

A. Article VII, Section 8

The RUTF is somewhat unique among special funds in the state in that Article VII, section 8, of the Iowa Constitution limits the purposes for which some, but not all, of its revenues may be used.

Article VII, section 8, reads as follows:

⁴⁰ Iowa Code §§ 312.3C and 312.5. Iowa Admin. Code 761-102.2(2). For the final report of the committee, see <http://publications.iowa.gov/6556> (last visited November 2011). For distributions prior to fiscal year 2006-2007, see 2005 Iowa Code §§ 307.22(6, 7) and 312.3. The Secondary Road Fund Distribution Committee consists of representatives appointed by the president of the Iowa County Engineers Association, the president of the Iowa County Supervisors Association, and the Department of Transportation.

⁴¹ Iowa Code § 310.27.

⁴² Iowa Code § 312.3(2)(a).

⁴³ Iowa Code § 312.3(2)(b).

⁴⁴ Iowa Code § 306.4.

⁴⁵ Iowa Code §§ 312.3 and 312.6.



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All motor vehicle registration fees and all licenses and excise taxes on motor vehicle fuel, except cost of administration, shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state or for the payment of bonds issued or to be issued for the construction of such public highways and payment of interest on such bonds.

Since the adoption of Article VII, section 8, by amendment in 1942, the scope and intent of the section have been the subject of several opinions by the Iowa Supreme Court and the Iowa Attorney General. Interpretations of constitutional or statutory provisions concerning the RUTF by the Iowa Supreme Court are binding on the General Assembly, other governmental entities and officials, and citizens of the state until legislatively or judicially overruled. Attorney General's opinions, however, are treated somewhat differently.

Though courts often consider Attorney General's opinions, they are not bound by the opinions and often reach a different conclusion on an issue than does the Attorney General.⁴⁶ The Attorney General does expect state and local government officials to follow official opinions of the Attorney General as they would a decision by a court of law.⁴⁷ Regarding the General Assembly, although opinions of the Attorney General are important to carrying out legislative duties and often provide important information regarding the constitutionality or application of pending or enacted legislation, the General Assembly, because it makes law rather than applies it, is not bound by the opinion of the Attorney General on an issue.⁴⁸

B. Effect of Article VII, Section 8, on RUTF Expenditures

1. Expenditures Related to Highways

The Iowa Supreme Court has found that Article VII, section 8, was not intended to be particularly restrictive as to the use of the protected funds:

From the language used, needs, and circumstances, we think it is fair to say the intent and purpose was to assure adequate highways and that a source of funds be available for that purpose; and at the same time limit the use of the fund, not to maintain the status quo of highway construction but to keep such fees and taxes at a reasonable rate and not allow the same to become a general revenue measure to be used for governmental purposes totally foreign to highways.⁴⁹

The key phrase used by the Court is "totally foreign to highways." An expenditure of moneys protected by Article VII, section 8 (registration and license fees and fuel taxes), will be analyzed in terms of whether the expenditure is related to highways. An expenditure will survive constitutional scrutiny if it bears some reasonable relationship to the construction, maintenance, or supervision of highways.

2. Construction, Maintenance, and Supervision Requirements

What constitutes "construction, maintenance, or supervision of highways" has also received a fairly broad interpretation by the Court and the Attorney General. The

⁴⁶ *Sioux City Comm. Sch. Dist. v. Bd. of Public Instruction*, 402 N.W.2d 739, 742 (Iowa 1987).

⁴⁷ Letter from Elizabeth M. Osenbaugh, Solicitor General, Department of Justice, to Richard L. Johnson, Deputy Director, Legislative Service Bureau (September 9, 1996) (on file with the Legal Services Division of the Legislative Services Agency).

⁴⁸ *Id.*

⁴⁹ *Edge v. Brice*, 113 N.W.2d 755, 759 (Iowa 1962).



Court has held that the term “construction” includes “all things necessary to the complete accomplishment of a highway for all uses properly a part thereof.”⁵⁰ Using this standard, the Court and the Attorney General have found a number of activities, including relocating utility facilities,⁵¹ building highway rest areas,⁵² and payment of tort claims against the DOT,⁵³ to be constitutionally acceptable expenditures of protected moneys.

The term “supervision” has been found by the Attorney General to be quite broad and to encompass the supervision of the overall operation of the highway system.⁵⁴ On the other hand, the Court has found that Article VII, section 8, is unambiguous in its limitation on where RUTF moneys may be spent.⁵⁵

C. Expenditures Not Constitutionally Restricted

The purposes for which revenues from the tax on motor fuel used for nonhighway purposes may be used are not subject to the constitutional limitation in Article VII, section 8, in the opinion of the Attorney General.⁵⁶ For example, moneys from the imposition of the motor vehicle fuel tax on watercraft are diverted to the Marine Fuel Tax Fund for boating projects and moneys from the imposition of the motor vehicle fuel tax on aircraft are diverted to the State Aviation Fund for aviation enhancement.

D. Other Expenditures

One issue that has yet to be settled by the Court is whether all moneys credited to the RUTF are limited in use by Article VII, section 8. Prior to July 1, 2008, use tax revenues were used as the funding source for several of the off-the-top expenditures and standing appropriations which arguably are not part of the construction, maintenance, or supervision of the highways in the state.⁵⁷ Because Article VII, section 8, does not mention the use tax in its restrictions, this appeared to be constitutionally acceptable.⁵⁸

However, the Attorney General has opined that Article VII, section 8, has the effect of protecting not only those moneys specifically mentioned in that provision but also those moneys that are commingled with the moneys mentioned in Article VII, section 8.⁵⁹ The Attorney General has also indicated that all allocations from the RUTF must be used for highway-related purposes, notwithstanding that the particular funding was not specifically linked to a constitutionally protected funding source.⁶⁰

⁵⁰ Id.

⁵¹ Id. at 759-760.

⁵² 1968 Op. Iowa Att’y Gen. 494, 501-502.

⁵³ 1984 Op. Iowa Att’y Gen. 158, 159.

⁵⁴ Id. at 159.

⁵⁵ *Frost v. State*, 172 N.W.2d 575, 583 (Iowa 1969). The Iowa Supreme Court held that the expenditure of primary road funds on a bridge project in which the moneys would be expended in another state clearly violated the amendment.

⁵⁶ 1973 Op. Iowa Att’y Gen. 349, 350. The opinion ties the constitutionality of the allocation of revenue collected on motor fuel not used for highway purposes with the validity of the estimate of how much fuel is used for nonhighway purposes.

⁵⁷ See 2007 Iowa Code § 423.43, where use tax revenue was diverted to the Iowa Comprehensive Petroleum Underground Storage Tank Fund, and 2007 Iowa Code § 312.2(14), where use tax revenue was diverted to fund public transit assistance.

⁵⁸ See *Frost v. State*, 172 N.W.2d 575, at 583, where the Iowa Supreme Court held that a statute which authorized the expenditure of moneys in the Primary Road Fund outside the state violated Article VII, section 8, because “such funds come partially from sources the constitution limits to use within the state.” So far, the Iowa Supreme Court has not applied this rationale to the expenditure of commingled funds in the RUTF.

⁵⁹ 1969 Op. Iowa Att’y Gen. 162, 165.

⁶⁰ 1991 Op. Iowa Att’y Gen. 9, 13. The Attorney General’s opinion concluded that moneys from the Motor Vehicle Fraud Account could not be transferred to the General Fund of the State due to the constitutional limitations of Article VII, section 8.



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In light of the Attorney General's opinions, the validity of some of the off-the-top allocations and annual appropriations from commingled use tax funds seemed to turn on whether the purposes for which the allocations or appropriations were made were highway-related in the constitutional sense. The Iowa Supreme Court has on several occasions discussed what constitutes a highway-related expenditure, but the Court has not addressed whether specific commingled use tax allocations and annual appropriations were for highway purposes.

Constitutional questions regarding the status of commingled use tax funds were arguably put to rest in 2008 when the General Assembly acted to repeal the vehicle use tax and replace it with a one-time fee for new registration.⁶¹ Pursuant to Article VII, section 8, all motor vehicle registration fees are dedicated to the construction, maintenance, and supervision of highways.

IV. Summary

Expenditures from the RUTF, with few exceptions, have been dedicated by law to highway-related uses. Although a significant portion of the moneys in the RUTF are subject to an explicit constitutional limitation regarding their expenditure, the Iowa Supreme Court has interpreted the limitation to apply only to expenditures which are "totally foreign to highways." This interpretation, together with the opinions of the Attorney General, has allowed the moneys in the RUTF to be flexibly applied to a variety of highway-related uses.

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⁶¹ See 2008 Iowa Acts ch. 1113. With the repeal of the vehicle use tax as a funding source for off-the-top allocations and standing appropriations, the Statutory Allocations Fund was established as a depository for certain moneys which are not constitutionally protected, but which are generally intended for deposit in the RUTF. Several former off-the-top allocations are now made from the Statutory Allocations Fund.